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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SOPHIA CURENIO,

Defendant and Appellant.

H034552

(Monterey County
Super. Ct. No. SS091513)

I. INTRODUCTION

Defendant Sophia Curenio, age 19, pleaded guilty to felony possession of a deadly weapon, a baseball bat (Pen. Code, § 12020, subd. (a)(1))¹ as part of a negotiated plea agreement. The trial court suspended imposition of sentence and placed defendant on probation with several probation conditions, including a restraint on appearing at court proceedings except in limited circumstances.

On appeal, defendant challenges the court appearance probation condition on the ground that the condition violates her constitutional right of access to the courts. For the reasons stated below, we agree and therefore we will direct the trial court to modify the court appearance condition to comply with constitutional standards. We will affirm the judgment as so modified.

¹ All further statutory references are to the Penal Code.

II. FACTUAL BACKGROUND

Since defendant pleaded guilty prior to the preliminary hearing, the following factual summary is taken from the probation report.

On May 28, 2009, a detective in the Salinas Police Department became aware that defendant, who had been released on her own recognizance in another case, was known to carry a baseball bat, crowbar, and/or handgun for her protection from the Sureño criminal street gang. Several days later, on June 8, 2009, police officers who were patrolling the Acosta Plaza apartment complex saw defendant drive into the parking lot in her green Kia automobile. The officers pulled up behind the Kia and detected the odor of marijuana coming from the car. When the officers approached the Kia, they found defendant standing outside and observed a man walking away. They also found two men inside the Kia.

After additional police officers arrived on the scene, the men were ordered out of the Kia and the car was searched due to the strong smell of marijuana. The search revealed a half-full can of malt liquor on the floor board, which Curenio admitted belonged to her. The officers also found a red bandanna in the glove compartment and an aluminum baseball bat in the trunk. Defendant told the officers that the baseball bat belonged to her brother.

After waiving her *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436), defendant also told the officers that the man who had been observed walking away from her Kia had the number 14 tattooed on his face, which is a symbol of the Norteño criminal street gang. He was the one who had brought the malt liquor into the vehicle. As to the baseball bat, defendant explained that she kept it for protection because she believed that Sureño gang members had targeted her for violence due to her association with Norteño gang members. When defendant was later interviewed for the probation report, she stated that she had been shot at on four different occasions, including one incident in which a bullet cut open the top of her thigh.

III. PROCEDURAL BACKGROUND

The felony complaint filed on June 10, 2009, charged defendant with possession of a deadly weapon, a baseball bat (§ 12020, subd. (a)(1); count 1), with the further allegation that the offense had been committed for the benefit of the Norteño criminal street gang. The complaint also charged defendant with committing street terrorism (§ 186.22, subd. (a); count 2.)

On June 17, 2009, defendant pleaded guilty to count 1, possession of a deadly weapon on the condition that she receives felony probation. At the sentencing hearing held on July 24, 2009, the trial court suspended the imposition of sentence and placed defendant on probation for three years. The conditions of probation included a restraint on defendant's appearance at criminal court proceedings unless defendant was scheduled to appear in court or her probation office had granted permission for her to appear.

Defendant subsequently filed a timely notice of appeal.

IV. DISCUSSION

On appeal, defendant argues that the probation condition restraining her appearance at court proceedings violates her constitutional right of access to the courts. Our analysis begins with a discussion of the appropriate standard of review.

A. Standard of Review

“ ‘Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation. [Citation.] The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions. [Citation.]’ (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*)). The general standard of review for an appellate challenge to a probation condition is therefore abuse of discretion. (*Ibid.*) ‘Generally, ‘[a] condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct

which is not itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality” [Citation.]’ [Citations.]” (*Ibid.*)

A different standard of review applies where, as here, the defendant makes a showing that the probation condition infringes upon his or her constitutional rights. “A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citations.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890; *Olguin, supra*, 45 Cal.4th at p. 384.) In addition, a probation condition that restricts constitutional rights must be “ ‘reasonably related to the compelling state interest’ in reforming and rehabilitating the defendant. [Citations.]” (*People v. Jungers* (2005) 127 Cal.App.4th 698, 703.)

The reviewing court applies “close scrutiny” to determine whether a probation condition that limits the probationer’s constitutional rights is sufficiently tailored to satisfy constitutional standards. (*Olguin, supra*, 45 Cal.4th at p. 384.) We are mindful, however, that “probation is a privilege and not a right, and that adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights--as, for example, when they agree to warrantless search conditions. [Citations.]” (*Ibid.*)

B. Probation Condition Restricting Court Appearances

As stated in the minute order, the court appearance condition at issue here instructs defendant that “[y]ou shall not be present at any criminal court proceeding or at any criminal courthouse in Salinas, King City or Juvenile unless you are scheduled for a court hearing, or have the express permission of your Probation Officer.”² The trial court

² The transcript of the July 24, 2009, sentencing hearing includes the trial court’s statement of the court appearance condition: “So you’re not to be present in any criminal courthouse proceeding or at any criminal courthouse unless you’re scheduled for a court hearing or have the express permission of your probation officer.”

denied defense counsel's request, at the time of sentencing, that this condition not be imposed.

On appeal, defendant initially requested in her opening brief that the court appearance condition be stricken because the condition is vague and overbroad, and the state's interest in preventing gang activity at courthouses is adequately protected by the other probation conditions imposed by the court. Following this court's decision in *People v. Leon* (2010) 181 Cal.App.4th 943 (*Leon*), regarding the constitutionality of a similar probation condition restraining court appearances, defendant submitted a letter dated February 12, 2010, requesting that the court appearance condition in this case be modified to conform with the modification that we ordered in *Leon*.

In their respondent's brief, the People argue that the court appearance condition imposed by the trial court is constitutionally valid because the condition is properly designed to protect witnesses, parties involved in court proceedings, and court staff by prohibiting individuals affiliated with gangs from attending criminal trials. The People also emphasize that defendant may request permission to attend court proceedings from her probation officer. We have not received any response by the People to defendant's request for modification of the probation condition pursuant to *Leon, supra*, 181 Cal.App.4th 943.

For several reasons, we agree with defendant that the condition of probation restraining her appearance at court proceedings must be modified to restrain her appearance only at those court proceedings concerning a known member of a criminal street gang.

First, we find that defendant has made a sufficient showing that the court appearance condition restricts a constitutional right. The United States Supreme Court has instructed that the public has a First Amendment right of access to criminal and civil trials. (*Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 603 [acknowledging right of access to criminal trials; "this right of access is embodied in the

First Amendment, and applied to the States through the Fourteenth Amendment”]; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1208 [the constitutional right of access extends to both criminal and civil trials]; *Bill Johnson’s Restaurants, Inc. v. NLRB* (1983) 461 U.S. 731, 741 [right of access to courts is an aspect of the First Amendment right to petition the government].)

Second, having closely scrutinized the court appearance condition at issue in this case in light of the record on appeal, we find that the condition is related to two compelling state interests: rehabilitation and protection of the integrity of the judicial system. The record reflects that the underlying crime, possession of a deadly weapon (a baseball bat), was committed to further the interests of a criminal street gang. Defendant admitted her association with the Norteño criminal street gang and, in particular, her association with a man at the scene of her arrest who had a Norteño gang tattoo. She also admitted that she carried the baseball bat to protect herself from violence by the rival Sureño gang. Thus, a limitation on defendant’s appearance at court proceedings that involve a gang member may be reasonably related to the state’s interest in rehabilitating defendant by limiting her association with criminal street gangs. (See *People v. Jungers*, *supra*, 127 Cal.App.4th at p. 703 [restriction on probationer’s right of association permissible if reasonably required for the needs of the state]; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1502, implicitly disapproved on other grounds in *In re Sade* (1996) 13 Cal.4th 952 [probation condition designed to curb dangerous association with gangs reasonable].)

Additionally, “the state’s ability to afford protection to witnesses whose testimony is crucial to the conduct of criminal proceedings is an absolutely essential element of the criminal justice system.” (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1149-1150 & fn. 15 [describing serious problem of witness intimidation by gang members].) As noted by one appellate court, “[t]he restriction on court attendance is aimed at preventing the gathering of gang members to intimidate witnesses at court proceedings.

And, “[g]ang activities and weapon possession go hand-in-hand.” [Citation.]” (*In re Laylah K.*, *supra*, 229 Cal.App.3d at p. 1502.) Thus, a limitation on defendant’s appearance at proceedings that involve a gang member may be reasonably related to the important state interests in prevention of witness intimidation and protection of the integrity of the justice system.

We find, however, that the condition imposed here is not narrowly tailored to serve these important state interests without violating defendant’s constitutional right of access to the courts. The recent decision in *People v. Perez* (2009) 176 Cal.App.4th 380 (*Perez*), is instructive in that regard. In *Perez*, the appellate court struck a court appearance probation condition that provided: “ ‘The defendant shall not attend any Court hearing or be within 500 feet of any Court in which the defendant is neither a defendant nor under subpoena. The defendant shall inform the probation officer prior to any Court appearance.’ ” (*Id.* at pp. 383, 386.) The *Perez* court observed that the condition, as written, was neither “limited to protecting specific witnesses or parties” nor “confined to trials involving gang members,” and was “so broad” that it prevented activities unrelated to future criminality. (*Id.* at p. 384.) The condition also prevented the defendant from participating in civil actions absent a subpoena. The probation condition here suffers from similar defects.

The terms of the court appearance condition imposed by the trial court allow defendant to attend only those criminal court proceedings where she is scheduled to appear or for which she has the prior permission of her probation officer. She is also barred from any criminal courthouse in Salinas, King City or “Juvenile.” The court appearance condition therefore operates as a general ban on defendant’s attendance at a number of proceedings in which she may have a legitimate interest, such as criminal matters in which a friend or family member is a victim, witness or party.

In short, rather than focusing upon those circumstances in which gang intimidation is most likely to be a concern, the condition provides a broad ban with probation officer

permission as the only guarantee of defendant's constitutional right of access to the courts. While the trial court might expect a probation officer to routinely grant permission for attendance in those situations that have no bearing on gang activities, we may not entrust defendant's constitutional rights to such unfettered discretion. "Although probation officers may be given 'wide discretion to enforce court-ordered conditions' (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1373), they may not create conditions not expressly authorized by the court (*id.* at pp. 1372-1373.)" (*People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1358.)

We therefore conclude that in order to render the court appearance probation condition constitutional, we must impose an express knowledge requirement that will restrain defendant from attending only those court proceedings concerning a known member of criminal street gang. (See *In re Sheena K.*, *supra*, 40 Cal.4th at p. 892 [condition forbidding association with anyone disapproved of by probation validated by imposing explicit knowledge requirement].)³ The condition is thus modified to read as follows: "You shall not be present at any court proceeding where you know or the probation officer informs you that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, you are a defendant in a criminal action, you are subpoenaed as a witness, or you have the prior permission of your probation officer." With this modification of the court appearance probation condition, we find no violation of defendant's constitutional rights.

V. DISPOSITION

Upon remand, the trial court shall amend the order granting probation to reflect the above changes to the probation conditions. The trial court shall modify the court proceedings condition to read as follows: "You shall not be present at any court proceeding where you know or the probation officer informs you that a member of a

³ Our conclusion is consistent with our recent decision in *People v. Leon*, *supra*, 181 Cal.App.4th 943.

criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, you are a defendant in a criminal action, you are subpoenaed as a witness, or you have the prior permission of your probation officer.”

As so modified, the judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

DUFFY, J.